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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,
Plaintiff,
v.
INISHEA BORDELON
a.k.a Inishea Bodelon
Defendant.

Case No.: CR 20-324 VC

DEFENDANT'S SENTENCING MEMORANDUM

INTRODUCTION

On February 2, 2021, Inishea Bordelon accepted responsibility for her involvement in low-level drug dealing. *See* Presentence Investigation Report (PSR) ¶ 1-2. Between the time of the offense on January 21, 2020, and her arrest on July 11, 2020, Ms. Bordelon had already gained full-time employment and put her life on the right track, achieving stability for herself and her children. Ms. Bordelon agrees with the sentence recommend by U.S. Probation of time served and three years of supervised release, with six months of home confinement. We request the Court consider counting the two weeks of pretrial location monitoring Ms. Bordelon already completed towards the six months, so that she completes 5.5 additional months of home confinement. This will allow Ms.

1 Bordelon to complete monitoring before she is due to give birth,¹ which will avoid complications
 2 while she approaches and reaches her due date.

3 **BACKGROUND**

4 Growing up, Ms. Bordelon's mother and sister were her whole world. *See* PSR ¶ 54-55, 59. Her
 5 father was not present. PSR ¶ 56. While she had five siblings total, four of them are significantly
 6 older, so they never had a close relationship. PSR ¶ 54. Her life was completely disrupted when, in
 7 the span of just a couple years, both her mother and her sister died far too young. PSR ¶ 59, 60. Her
 8 mother died after a battle with breast cancer when Ms. Bordelon was just 17 years old. PSR ¶ 59. Ms.
 9 Bordelon and her sister relied heavily on one another and remained living together in the family
 10 apartment. PSR ¶ 59. But less than three years later, her sister died from a stroke at just 21 years old.
 11 PSR ¶ 60. In the year prior, Ms. Bordelon and her sister had both given birth. *See* PSR ¶ 61. After her
 12 sister's death, Ms. Bordelon took custody of her sister's child in addition to her own. *Id.* She is the
 13 sole caregiver to those two children, now both 11 years old. *Id.*

14 As a result, when Ms. Bordelon was just 20 years old, she was left with an enormous
 15 responsibility while grieving the loss of the only family she ever really had. She acknowledges that
 16 did not always handle the pressure of this situation well. *See* PSR ¶ 19; Declaration of Sophia
 17 Whiting (Whiting Decl.) Ex. A. She looked to friends as sources of support, but she realizes now that
 18 they would get into trouble together and they did not have her best interests at heart. PSR ¶ 63. In
 19 addition to the instant offense, over the past decade she received three misdemeanor convictions and
 20 one misdemeanor diversion. PSR ¶ 35-38. She is now 32 years old, and has matured beyond the
 21 recklessness of her past. She no longer hangs out with former friends and prefers to stay home with
 22 her children. *See* PSR ¶ 63, 69; Whiting Decl. Ex. A. Her focus is on her family and her work. *Id.*

23 The last time Ms. Bordelon sold narcotics was to a federal confidential informant, at his
 24 request, on January 21, 2020. *See* PSR ¶ 13. A federal warrant was issued five months later, on June
 25 8, 2020. PSR ¶ 4. Ms. Bordelon was arrested pursuant to that warrant on July 11, 2020. *Id.* Ms.
 26 Bordelon had not been involved in drug dealing for six months at the time of her arrest. Earlier that

28 ¹ On May 3, 2021, after the Final PSR was filed, Ms. Bordelon informed counsel and U.S. Probation
 through counsel that she is approximately three months pregnant and due in November.

1 year, in February 2020, she got a job as Program Monitor with Swords to Plowshares.² PSR ¶ 73. She
 2 got additional work providing In Home Support Services (IHSS). PSR ¶ 74. Over the past year and
 3 three months, Ms. Bordelon has worked incredibly hard to achieve the financial stability and security
 4 that she has always wanted for herself and her children. This is especially important now that she is
 5 expecting a baby, due in November. She knows she is the only source of support for her children and
 6 that “she is trying to be a better role model.” Whiting Decl. Ex. A.

7 After Ms. Bordelon’s arrest, she was released pretrial and has performed nearly perfectly over
 8 the past 11 months, with the exception of accidentally missing two drug tests, which she quickly
 9 corrected and tested negative. PSR ¶ 5. She has never tested positive for drug use or otherwise
 10 violated the conditions of her pretrial release. *Id.* She was removed from location monitoring after
 11 two weeks because of her perfect compliance. *Id.*

12 DISCUSSION

13 I. The Sentencing Guidelines (18 U.S.C. § 3553(a)(4))

14 The government and Ms. Bordelon agree that the adjusted offense level is 15. PSR ¶ 30. She is
 15 in criminal history category (CHC) III. PSR ¶ 40. Her advisory guideline range is 24 to 30 months.

16 Although the Court must remain mindful of the sentencing guidelines recommendation, the
 17 advisory guideline range is not presumptively reasonable and it cannot be given any more or less
 18 weight than any other factor listed in section 3553(a). *United States v. Autery*, 555 F.3d 864, 872 (9th
 19 Cir. 2009); *United States v. Carty*, 520 F.3d 984, 991 (9th Cir. 2008). The court’s paramount concern
 20 must be to ““impose a sentence sufficient, but not greater than necessary’ to reflect the seriousness of
 21 the offense, promote respect for the law, and provide just punishment; to afford adequate deterrence;
 22 to protect the public; and to provide the defendant with needed educational or vocational training,
 23 medical care, or other correctional treatment.” *Carty*, 520 F.3d at 991. A sentence of time served and
 24 three years of supervised released, with six total months of home confinement, best aligns with the
 25 goals and factors of section 3553(a) for the following reasons.

28 ² Since the Final PSR was filed, Ms. Bordelon has provided verification of employment of both
 Swords to Plowshares and IHSS.

1 **II. Ms. Bordelon's History and Circumstances Warrant a Downward Variance (18 U.S.C. §**
 2 **3553(a)(1))**

3 As detailed in the Background section above, Ms. Bordelon's history and circumstances
 4 counsel a downward variance from the advisory range. *See 18 U.S.C. § 3553(a)(1).* She has been
 5 responsible for herself since she was just 17 years old, and responsible for two children since age 20.
 6 This pressure, combined with a poor support system and difficulty securing employment, led Ms.
 7 Bordelon to the regrettable decision to be involved in low-level drug distribution to support her
 8 family. But Ms. Bordelon is eager to lead a legitimate life, and that is exactly what she started to do
 9 before she was charged in this case, and has continued to do since.

10 Ms. Bordelon regrets her past criminal activity, and recognizes that this offense does not stand
 11 alone. She ultimately only lands in CHC III, though, based on two minimal prior incidents: (1) a
 12 successful diversion resulting in dismissal, PSR ¶ 36, and (2) a reckless driving conviction, PSR ¶ 37.
 13 First, a diversionary disposition is only counted if there is a finding or admission of guilt in a judicial
 14 proceeding. USSG §4A1.2(f). We recognize there was a finding of guilt, and withdraw the objection
 15 in the PSR Addendum, ¶ 6, but maintain that this is a minor offense that was ultimately dismissed.
 16 Second, reckless driving offenses are not counted unless they received a term of probation of more
 17 than one year. USSG §4A1.2(c). In this case, Ms. Minner received two years court probation (i.e.
 18 unsupervised probation), which is in practice a lesser sentence than one year of standard supervised
 19 probation. While the sentencing guidelines do not discuss this supervised/unsupervised distinction,
 20 she ultimately received a very minimal sentence for a minor offense. If just one of these offenses
 21 were not counted, Ms. Minner would have three points and fall into CHC II. The sentencing
 22 guidelines recognize a downward departure may be warranted where the criminal history category
 23 “substantially over-represents the seriousness of the defendant’s criminal history” pursuant to USSG
 24 §4A1.3(b)(1), and a downward variance would certainly be appropriate.

25 Ms. Bordelon will not continue to commit crimes, and she has a proven track record while on
 26 pretrial release. Ms. Bordelon had her own wakeup call after the offense but before being charged,
 27 and the experience of suffering a federal felony conviction has certainly reinforced the lesson she had
 28 already learned—if she continues to break the law, she will be taken away from her children. She has
 now been working full time for 15 months, with a second job as a care provider, while raising two

1 11-year-olds. She is also now pregnant. A custodial sentence is not appropriate given her past, her
 2 extraordinary success on pretrial release, and her current circumstances.

3 **III. A Downward Variance is Appropriate to Reflect the Severity of the Offense and Provide
 4 Just Punishment (18 U.S.C. § 3553(a)(2)(A))**

5 This is Ms. Bordelon's first felony conviction. That alone is a substantial punishment, given the
 6 collateral consequences and stigma of a felony conviction. Furthermore, a downward variance is
 7 warranted because this is a less serious offense compared with other federal felonies. *See* 18 U.S.C. §
 8 3553(a)(2)(A). Mr. Bordelon takes responsibility for her criminal conduct and recognizes that selling
 9 any amount of drugs negatively impacts public health. However, federal sentencing laws "that were
 10 designed to focus penalties on the most serious drug traffickers have resulted in long periods of
 11 imprisonment for many offenders who performed relatively minor roles in the drug trade." Collins
 12 and Vakharia, *Criminal Justice in the Fentanyl Era: One Step Forward, Two Steps Back*, Drug Policy
 13 Alliance, 3 (January 2020).³

14 The fact is that hand-to-hand drug sales are—or should be—a minor offense compared to the
 15 vast majority of federal prosecutions, including drug prosecutions. Federal drug cases were intended
 16 to present more serious facts, such as substantially larger quantities of controlled substances,
 17 weapons, or an organized drug trafficking operation. Ms. Bordelon also would face a lower offense
 18 level, and therefore guidelines range, had she not provided the quantities specifically requested by the
 19 government agent, a confidential informant, in this case. Additionally, her offense level is heightened
 20 by the continued, racially discriminatory, disparity between crack cocaine and powder cocaine, which
 21 is currently 18 to 1.⁴ Had the offense involved powder cocaine, Ms. Bordelon's guidelines range
 22 would be 10 to 16 months. A variance is appropriate because Ms. Bordelon was ultimately at the
 23 lowest levels of the drug trade.

24 ³ Available at https://drugpolicy.org/sites/default/files/dpa-cj-reform-fentanyl-era-v.3_0.pdf.

25 ⁴ "While the Fair Sentencing Act [reducing the disparity from 100:1 to 18:1] was a major
 26 improvement, the 18:1 measure is still an arbitrary difference that cannot be defended. There simply
 27 is no sound scientific reason to punish crack and powder cocaine offenses differently. For many
 28 Americans, especially Black Americans, the unequal treatment of crack and powder cocaine offenses
 is the most glaring example of racial discrimination in the criminal justice system." Ring and Rice-
 Minus, *Why do we still punish crack and powder cocaine offenses differently?*, The Hill, (March 3,
 2021), <https://thehill.com/opinion/criminal-justice/540816-why-do-we-still-punish-crack-and-powder-cocaine-offenses-differently>.

1 **IV. A Sentence of Home Confinement Affords Adequate Deterrence and Addresses Safety**
 2 **Concerns (18 U.S.C. §§ 3553(a)(2)(B) and (C))**

3 Public protection has already been accomplished in this case through Ms. Bordelon's changed
 4 behavior, demonstrated by 15 months of legitimate employment and law-abiding conduct. Three
 5 years of federal supervision, with 5.5 additional months of location monitoring, will ensure that Ms.
 6 Bordelon's positive conduct continues. Federal supervision with home confinement is also a large
 7 deterrent for Ms. Bordelon, as it provides more monitoring than any prior sentence and is a
 8 significant restriction on her liberties. Ms. Bordelon knows that she does not have room for mistakes
 9 while on supervised release because of the potential consequences for herself and her family.

10 **V. A Sentence of Time Served and Home Confinement Provides Punishment and is**
 11 **Appropriate in Light of the Sentences Available (18 U.S.C. § 3553(a)(3))**

12 The alternative to home confinement is additional incarceration, and that is simply not practical
 13 or just under the circumstances. Unlike many defendants that come before this Court, Ms. Bordelon
 14 is the *sole* care provider for two minor children and she is pregnant. Especially in light of the other
 15 3553(a) factors discussed above, location monitoring will accomplish the goals of sentencing without
 16 leaving two children parentless and forcing a pregnant woman into an ill-equipped prison
 17 environment in the midst of a pandemic.

18 **VI. Ms. Bordelon Agrees to the Vast Majority of Recommended Conditions, with Two**
 19 **Objections**

20 First, Ms. Bordelon objects to recommended special condition 2, treatment for drug and alcohol
 21 abuse, as unnecessary and unsupported by the record. Ms. Bordelon has been tested for nearly a year
 22 and has never tested positive for any substance, including marijuana. Ms. Bordelon will be subject to
 23 the standard testing condition, which requires at least two random tests. Should a problem ever come
 24 to light through standard testing, a treatment program may be appropriately recommended, but at this
 25 time treatment is not necessary and would take time away from Ms. Bordelon's responsibilities at
 26 work and as a single mother.

27 Second, Ms. Bordelon objections to recommended special condition 4, because her workplace
 28 is in the proposed stay-away zone. She has worked there for 15 months without issue.

CONCLUSION

For the aforementioned reasons, Ms. Bordelon respectfully requests the Court sentence her to time served and three years of supervised released, with a condition of 5.5 additional months (6 months total) of home confinement.

Dated: May 4, 2021

Respectfully submitted,

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/S
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